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Argument before the Hon. J.D. Cox, .. in  
support of the right of the Central  
branch Union Pacific railroad company..  
to continue and extend its road to the  
"Main trunk". 1869.

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# ARGUMENT

BEFORE THE

HON. J. D. COX,

*Secretary of the Interior,*

IN SUPPORT OF THE RIGHT OF

The Central Branch Union Pacific

*RAILROAD COMPANY,*

Under existing laws, to continue and extend its road to the "Main Trunk" (the Union Pacific R. R.) as one of the "Branches" thereof.

BY EFFINGHAM H. NICHOLS,

*Counsellor-at-Law.*

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# BEFORE THE HON. J. D. COX,

SECRETARY OF INTERIOR

MR. SECRETARY: The law of this case is so simple and plain that any protracted argument seems unnecessary, yet to arrive at a just conclusion is so important both to the Government and to the company that we are constrained to ask your indulgence while we endeavor, it may be somewhat at length, to lay before you what we sincerely believe to be our rights in the premises.

The Central Branch Union Pacific Railroad Company has presented to the Secretary of the Interior a *petition* bearing date February 8, 1869, accompanied by a *map showing the extension of the road* of said company, pursuant to the provisions of the 16th section of the Pacific Railroad act of 1864. The petition sets forth.

1st. That said company has completed its road for the distance of one hundred miles from the Missouri river, as authorized and required by law.

2d. That the Eastern Division Company has filed a map purporting to designate the general route of that part of the Pacific railroad which ~~it~~ was authorized and required to build, and called in the law "the road through Kansas," but that said company has not completed "its said road" within the time required.

3d. That in consequence of said "road through Kansas" not having been completed within the time required, the Central Branch Company now claims the right to continue the construction of *its* road and telegraph in the general direction and route upon which said "road through Kansas" was, by the acts of 1862 and 1864, authorized and required to be built until its intersection with the main trunk at the 100th meridian.

The petitioner, therefore, requests that the honorable Secretary will, for the benefit of the petitioner—

1st. Withdraw from private entry and sale the Government lands within 25 miles of the line shown upon the map accompanying the petition, which map the petitioner prays may be accepted,

approved, and permitted to be filed as a map showing the extension of the road of the petitioner, pursuant to the provisions of the 16th section of the act of 1864; or,

2d. If the route on said map designated cannot be adopted, that then, for the like purpose, the honorable Secretary will withdraw from private entry, &c., the Government lands lying within 25 miles of the line shown upon the map filed by the Eastern Division Company; and,

3d. In order to give confidence to capitalists, &c., that the Secretary will make such order in respect to the company's right to receive land grants and subsidies for said extension as will secure them to said company, and as are warranted by law and the rights of the company in the case; and,

4th. That the honorable Secretary will make such other or further order in the case as, having reference to any prior action, may be necessary or proper to secure all the legal rights of the petitioner in the premises.

#### ARGUMENT.

The 16th section of the Pacific Railroad act of 1864 is the crowning section of the Pacific Railroad law. Taken in connection with previous legislation, it effectually secures a continuous line of railway from the Missouri river to the Pacific coast; while at the same it protects each and every company acting in good faith against the failure or omission from any cause of any other company to construct its portion of the line. It provides that—

1. "Any two or more of the companies authorized to participate in the benefits of this act are hereby authorized at any time to unite and consolidate their organizations as the same may or shall be upon such terms and conditions, and in such manner as they may agree upon."

2. "In case, upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies, authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri river hereinbefore designated to the Pacific coast,) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incom-

"plete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular the several acts and things hereinbefore provided, authorized or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto." And

3. "In case any company authorized thereto shall not enter into such consolidated organization, such company, upon the completion of its road as hereinbefore provided, shall be entitled to and is hereby authorized to continue and extend the same under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof as fully and completely as are herein provided touching such consolidated organization."

No consolidation contemplated by this section was ever attempted or effected. The Central Branch Company, under the provisions last quoted, claims "the completion of its road as hereinbefore provided," and that therefore it is "entitled to and is hereby authorized to continue and extend the same under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof as fully and completely as are herein provided touching such consolidated organization."

#### FIRST.

That the provisions of this section apply to the petitioner is evident from the fact that the Central Branch Union Pacific Railroad Company, as the assignee of the Hannibal and St. Joseph Railroad Company, is, in the language of the section, one "of the companies authorized to participate in the benefits of this act."

This company became such assignee by virtue of an assignment



made in pursuance of the provisions of the act, whereby it was provided that for the purpose of participating in the construction of the Pacific railroad, the Hannibal and St. Joseph Railroad Company might use any railroad charter which had been or might be granted by the legislature of Kansas. (See section 13, act of 1862.)

## SECOND.

The Central Branch Union Pacific Railroad Company has completed its road for 100 miles in length next to the Missouri river; and as this company, by said section 16 of the Pacific Railroad act of 1864, is entitled and authorized to continue and extend its road *only* "*upon the completion of its road as herein provided,*" the *first* important question to determine is whether the *condition* has been complied with, that is, whether this company *has completed its road as authorized and required by law.*

I. The following comments upon the 13th section of the act of 1862, in connection with the 9th section of the same act, will tend to elucidate this point. Section 13 reads thus:

"That the Hannibal and St. Joseph Railroad Company of Missouri may "extend its roads from St. Joseph *via* Atchison, to connect and unite with "the road through Kansas, upon filing its assent to the provisions of this act, "upon the same terms and conditions in all respects, for 100 miles in length "next to the Missouri river, as are provided in this act for the construction of "the railroad and telegraph line first mentioned, and may for this purpose use "any railroad charter which has been or may be granted by the legislature of "Kansas: *Provided*, That if actual survey shall render it desirable, the said "company may construct their road, with the consent of the Kansas legislature, "on the most direct and practicable route west from St. Joseph, Missouri, so "as to connect and unite with the road leading from the western boundary of "Iowa at any point east of the 100th meridian of west longitude, or with the "main trunk road at said point; but in no event shall lands or bonds be given "to said company, *as herein directed*, to aid in the construction of their said "road for a greater distance than 100 miles."

This section provides that the Hannibal and St. Joseph Railroad Company may extend its road *via* Atchison, *or* it may construct its road west from St. Joseph so as to connect and unite with the Omaha branch at any point east of the 100th meridian, *or with the "main trunk"* at said point. Of these two provisions

(or perhaps three) the company elected the first, namely, to extend its road from St. Joseph *via* Atchison to connect and unite with "the road through Kansas." It will be observed that the road with which the Central Branch was to connect and unite was *not* the road of the Eastern Division, but "*the road through Kansas.*" Now this "road through Kansas" was very *specially defined* by the 9th section of the act of 1862, as by reading said section will fully appear, and among the requirements in *locating* this road was the following :

"And said railroad through Kansas shall be *so located* between the mouth "of the Kansas river, as aforesaid, and the aforesaid point on the 100th "meridian of longitude, that the several *railroads* from Missouri and Iowa, "herein authorized to connect with the same, can make connection *within* "*the limits prescribed* in this act, provided the same can be done without "*deviating* from the general direction of the whole line to the Pacific "coast. The route in Kansas *west* of the *meridian* of Fort Riley, to the "aforesaid point on the 100th meridian of longitude, to be subject to the "approval of the President of the United States, and to be determined by "him on *actual survey.*"

The obvious intention of this provision is, that this "*road through Kansas*" shall be *so located* between the mouth of the Kansas river and the said point on the 100th meridian that the extension of the Hannibal and St. Joseph railroad, (which, in the language of the law, was one of the roads "herein authorized to connect with the same,") might make connection "*within the limits prescribed,*" (*that is to say, one hundred miles,*) provided the same could be done without deviating from the general direction of the whole line to the Pacific coast.

It will also be observed that the language of the 13th section is that the Hannibal and St. Joseph Railroad Company "may *extend* its road." The Hannibal and St. Joseph road being an *east* and *west* road, and running in a *westerly* direction, if *extended* would continue to run in a *westerly* direction. Accordingly, the road of the Central Branch Company was built so as to run *westerly* by the most direct and practical route, with one deflection only, namely, the one required by the words, "*via Atchison.*"

The law certainly contemplated that the intersection of these two roads *should take place* as stated, unless the formation of the

country should render a *deviation* on the part of "the road through Kansas" necessary. And lest any dispute should grow out of this, the law makes the route of the Kansas road, west of the meridian of Fort Riley, (which meridian is only about 87 miles west of Atchison,) subject to the approval of the President of the United States, and to be determined by him on *actual survey*.

And inasmuch as "*the road through Kansas*" has not been constructed, the presumption remains that this road *could have been constructed* as the law contemplated; and inasmuch as the Central Branch Union Pacific Railroad Company has constructed and completed its road upon a direct and practical route west from Atchison, for the distance of 100 miles, it must be admitted and conceded that the road of the petitioner, as authorized and required by law, *has been and is completed*.

II. Even without reference to section 9, there are some nice peculiarities of expression in the language of the 13th section, which point to the same conclusion.

The section is divided into *two* parts; the first preceding the word "*provided,*" and the *second* succeeding it. The language of the former is, (briefly,) that the company may extend its road "*via Atchison to connect and unite with the road through Kansas.*" Mark the words, "*to connect and unite;*" not "*so as to connect and unite,*" as used in the latter part of this section, where the distance to be constructed is *far more* than 100 miles; not "*until it connects and unites;*" not to designate a *point to which* the company may extend its road, but simply "*to connect and unite.*" In other words, "*in order to connect and unite,*" or in still other language, "*for the purpose of connecting and uniting*" with the "road through Kansas." And if this be so, (as it clearly is,) then the words, "for one hundred miles in length, next to the Missouri river," are a *limitation not only* to the terms and conditions, but *also* to the *extension* itself, and the intention of the act is the same as though it read as follows:

"*And be it further enacted, That the Hannibal and St. Joseph Railroad Company of Missouri, in order to connect and unite with the road through Kansas, may extend its road from St. Joseph, via Atchison, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for 100 miles in length, next to the Missouri river, as are provided in this act for the construction of the railroad and telegraph line*

"first mentioned, and may for this purpose use any railroad charter which has been, or may be, granted by the legislature of Kansas."

This interpretation becomes still more apparent and clear upon considering the effect of the words, "*so as to connect and unite,*" as used in the second part of this section.

The provision there (briefly stated) is, that the company may construct its road west from St. Joseph "*so as to connect and unite*" with the Omaha branch, or with the main trunk. To do either of these would require the construction of a road for a far greater distance than one hundred miles; and hence the difference of expression. It is said that this part of the section had its origin in the local jealousies on the part of St. Joseph in reference to the growth of Atchison, and lest Atchison should become one of the initial points of the Pacific railroad. The provision having been insisted upon that this company, *as an alternative*, might construct its road from St. Joseph so as to connect and unite with the Omaha branch, or with the "*main trunk,*" Congress said we will grant this request; but as there is no necessity for the construction of so much greater length of road, and the giving of government aid therefor, and as the deflection *via* Atchison is but slight, and as provision has been already made for the construction of the road "*via* Atchison" for the entire distance for which it is necessary to construct a road, we do it on one condition—that, whichever route is adopted, in no event "*as herein directed,*" shall bonds or lands be given to aid in the construction of said road for a greater distance than 100 miles. In other words, if the company elect to construct its road from St. Joseph so as to connect and unite with the "*Omaha branch,*" or so as to connect and unite with the "*main trunk,*" it cannot receive lands or bonds for the entire length of its road, but only for the same distance as would be necessary and as have been provided in case the road had been extended *via* Atchison.

III. Not only has the road been completed as to *length*, but it has been completed in all *other* respects "*as hereinbefore provided.*" Section 7 of the act of 1862 provided that each company "shall designate the *general route* of its road as near as may be, and shall file a map of the same in the Department of the Interior." Of course the *power* to "*designate the general route*" here implied

is *subject* to all that may affect such designation in other parts of the law. As the authority of the Hannibal and St. Joseph Railroad Company was "that it may *extend* its road," as the *extending* of a line is the continuing of that line in the same direction, the power to "designate" is subject thereto. And as "the road "through Kansas" was, by the 9th section of the act of 1862, required to be "*so located*" that the road of the Central Branch Company, "herein authorized to connect with the same, can "make connection within the limits prescribed, provided the same "can be done without (either of said roads) *deviating* from "the *general direction* of the *whole line to the Pacific coast*," the power to "designate" is *subject* to this provision also. The Central Branch Company, therefore, in exercising the power to designate, exercised the same in compliance with the requirements, and designated and have since constructed its road in a *westerly direction*. None other would have been an *extension* of the Hannibal and St. Joseph Railroad. None other could have been designated "without *deviating* from the *general direction* of "the *whole line to the Pacific coast*." None other would have complied with the *spirit* and *general tenor* of the act. The designation thus made has been confirmed and accepted by the department. It has been approved by the commissioners; lands have been withdrawn thereon, and subsidies have been issued thereon, both previous and subsequent to the act of 1866. The road and telegraph have been completed and equipped in all respects as required by this act. Certificates of commissioners to that effect have been duly filed. So that the road has been completed "*as hereinbefore provided*." The *condition*, therefore, viz, "upon the "completion of its road as hereinbefore provided," has been complied with. And the time within which the Eastern Division Company was to have constructed "the road through Kansas" having transpired, the law and contract say that the Central Branch Company shall be entitled to (and is hereby authorized to) continue and extend *its* road, &c.

### THIRD.

In pursuing the provisions of 16th section of the act of 1864, the *next* and the most material question which arises is this, *namely*: "*What are the circumstances*" under which the peti-

tioner, having completed its road, is authorized to continue and extend the same?

I. They are such as are to be derived from the consideration of the following two quotations of said 16th section, viz :

1. "In case, upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads, of either of the other companies, *authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri river hereinbefore designated, to the Pacific coast,*) shall not have constructed the number of miles of *its said road* within the time herein required, such consolidated organization is hereby authorized to continue the construction of *its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built*, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith.

2. "In case any company authorized thereto shall not enter into such consolidated organization, such company, upon the *completion* of its road as hereinbefore provided, shall be entitled to and is hereby authorized to *continue and extend* the same under the *circumstances*, and in accordance with the *provisions* of this section, and have all the *benefits* thereof as fully and completely as are herein provided touching such consolidated organization."

Now, what road is intended by "*its said road*" in the first quotation? Is it "the road through Kansas," or is it the road which the Eastern Division Company have constructed under the provisions of the act of July 3, 1866?

In order to fully understand the provisions of the act under consideration, it must be borne in mind that Congress was dealing with *separate and independent* companies, *contracting*, as it were, with each for the construction of *different parts* of what was designed to be a complete and harmonious whole, in accordance with what was then a *definite and fixed plan*. And in order that no one of these companies should be at the mercy of the others or any one of them, and so that any company putting in its money and constructing its road in good faith should not be compelled to lose its investment by reason of the non-construction of parts necessary to form a continuous line, either from the bad faith or pecuniary disability of any other company or any other cause, in short, so that no one of these companies should be deprived

without its assent of a right so necessary and vital both to the Government and the Company as the right of a *connection*. Congress provided that any road upon the completion of its road "is hereby authorized to *continue* the construction of its road and "telegraph in the general direction and route upon which such "incomplete or unconstructed road is *hereinbefore* authorized to "be built" in case "any other of the road or roads of either of the "other companies *authorized as aforesaid*, and forming or intended "or necessary to form a portion of a continuous line from each of "the several points on the Missouri river *hereinbefore* designated "to the Pacific coast, shall not have constructed the number of "miles of its said road within the time herein required."

The road constructed by the Eastern Division in pursuance of the provisions of the act of 1866 *diverges so materially* that it can in no just sense be deemed to be the *same* road as that provided for in the acts of 1862 and 1864, but rather a *rival* and independent line, for a *connection with which no provision exists*. And viewing it from the stand-point of a contract with the petitioner, it can in no sense be regarded as a road "*forming, or intended, or necessary to form a portion of a continuous line*" from Atchison to the Pacific coast. While on the contrary "the road through Kansas" does form a *portion of a continuous line* from Atchison to the Pacific coast. And not only so, but at the time of the passage of this act of 1864 it was then a road "*authorized as aforesaid*," and a road the general direction and route of which was at that time "*hereinbefore authorized*," and the part thereof now sought to be constructed by the petitioner constitutes a "portion" of the only road of which it could have been said that it was a "road *hereinbefore authorized* to be constructed by" the Eastern Division Company, and Congress, by the act of 1866, as will presently be seen, declared that this was the road "*now required by law*." "*The road through Kansas*" must therefore be regarded in this case as the road intended by the words "*its said road*." And as this road, "the road through Kansas," should have been completed, according to the laws and resolutions of Congress, the second one hundred miles thereof, by the 27th day of June, 1867, and each succeeding one hundred miles in each successive year thereafter until the whole was completed, neither of which requirements have been complied with, it follows, therefore, that this road has not been constructed within the time required, and

that the "*circumstances*" have arisen and transpired under which the Central Branch Company is authorized to continue and extend its road.

II. But a still further elucidation of the "*circumstances*" under which the Central Branch Company is entitled and authorized to continue and extend its road may be obtained from making a *specific application* of the case, which has now actually arisen, to the language and text of the law. If this be done with nicety and care, quoting the exact language and observing the proper juxtaposition of sentences, it will be found that the Central Branch Union Pacific Railroad Company, upon the completion of its road as hereinbefore provided, is entitled and authorized to continue and extend the same, &c. :

"In case the road of the Eastern Division Company, ('the road through Kansas,') authorized as aforesaid, and forming or intended or necessary to form a portion of a continuous line from (Atchison) one of the several points on the Missouri river, hereinbefore designated, to the Pacific coast, shall not have (been) constructed [*i. e.*] the number of miles of its said road within the time herein required."

It will be observed that the word "*been*" is added to the original text. This is necessary to correct the grammar. If you leave the text as it stands, namely, "*shall not have constructed*," then you will have to subject the *nominative* to the *verb*. But as the *nominative* has already been *uttered*, you must subject the *verb* and not the *nominative*. In other words, you must correct grammatical errors *where* and *when* you find them, and *only* where and *only* when you find them.

If, however, it be insisted that the words "*shall not have constructed*" shall remain without change, and the *nominative* be made subject thereto, then the circumstances under which the Central Branch Union Pacific Railroad Company, upon the completion of its road, is entitled and authorized to continue and extend the same, are as follows, viz :

"In case the Eastern Division Company shall not have constructed the number of miles of the road through Kansas, (authorized as aforesaid, and forming, or intended, or necessary to form a portion of a continuous line from Atchison, one of the several points on the Missouri river, hereinbefore designated, to the Pacific coast,) within the time herein required."



Or leaving out the words embraced in the parenthesis, they being merely descriptive:

"In case the Eastern Division Company shall not have constructed the road through Kansas within the time required."

Or if you again change and make "*the road*" the nominative to the verb, instead of "*the company*," as is the case in the original text, then the Central Branch Company are entitled and authorized to continue and extend its road:

"In case 'the road through Kansas' shall not have been constructed within the time required."

It may not be material whether the text shall read "*in case said road shall not have been constructed*," or whether it shall read "*in case the company shall not have constructed said road*," the road having been specially defined by statute. But my object is to show that the *non-construction of the inanimate road itself*, within the time required, is *the event* in which the Central Branch is entitled and authorized to continue and extend its road. This conclusion is strengthened by the words "*number of miles of its said road*," showing that Congress had in view the completion within certain *fixed times of so many miles* as would carry the road to the point where another road was "to connect and unite with" it.

III. A still other portion of this 16th section of the act of 1864 reads as follows:

"And said consolidated company shall pay to said defaulting company the value, to be estimated by competent engineers, of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless*, That said defaulting company may at any time before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised, pursuant to this

"section, shall be to that extent an abatement of the rights, benefits, and "privileges hereinbefore granted to such other company."

It will be observed that the company which was authorized to build the road, the non-construction of which is provided against in this section, is spoken of as "*the said defaulting company.*" That this is used for *brevity* sake for the purpose of *designating* the company simply, a little reflection will at once show. Had some such designating term not been used, many more words would have been necessary to convey the meaning. Surely the word "*defaulting*" does not *per se* inculcate anything *new* into this section. It is qualified by the word "*said,*" and therefore has reference to something that *has already been set forth*. It is used simply to point out which of the two companies is intended, the company which has built the road, or the company which has omitted so to do. The word "*default,*" wherever and whenever it is used, *never* implies anything more than *omission*, unless *specifically* set forth in the context. When a defendant in action of law omits to plead within the time allowed him for that purpose, or fails to appear in the trial, he is said to *make default*; and the judgment entered in the former case is technically called a judgment *by default*. If the *fact* that the Eastern Division Company has not built said "road through Kansas," or that said "road through Kansas" has not been built, constitutes a *default or omission*, then such *default or omission*, whichever you choose to term it, constitutes *the event* in which the Central Branch Company is entitled and authorized to continue and extend its road. And *that event* having occurred, the circumstances have arisen, as already stated, under which the Central Branch Company is *authorized to continue and extend its road*.

It will be seen that the Eastern Division Company, in the event of the extension of the Central Branch road by reason of the non-construction of the "road through Kansas," would have suffered no *forfeitures*. On the contrary, for all work done and materials furnished that company would not only have been paid, but after the completion of the road by the Central branch were authorized at any time, before receiving pay for its said work and materials, to resume the control of the road upon the payment of the value of the work done and materials furnished by the Central Branch Company.

It will further be observed that the statute declares that "all the rights, benefits, and privileges which shall be acquired, possessed, or exercised pursuant to this section shall be to that extent an *abatement* of the rights, benefits, and privileges hereinbefore granted to such other company." Applying this to the case under consideration, the rights, &c., acquired, &c., pursuant to this section by the Central Branch Company will be to that extent an abatement of the rights, &c., hereinbefore granted to the Eastern Division Company. By *abatement* is meant *diminution, reduction*. The rights, benefits, and privileges which the Central Branch Company will acquire under this section will be acquired by virtue of *original legislation* made by Congress in pursuance of their *law-making power* and in pursuance of the *reservation* made in the *original act or contract*, by which (see sec. 18) it was provided that "Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act." And the statute, in view of the legislation contained in this 16th section, provides that *previous legislation* shall be modified accordingly, and that the rights, benefits, and privileges which might have been acquired, possessed, or exercised under the provisions of previous legislation are *abated or diminished* to the extent to which rights, benefits, and privileges may be acquired, possessed, or exercised in pursuance of the present legislation—and it is very plain that this provision is made with "*due regard for the rights of said companies named herein.*" In short, this whole section, while it *adds to*, at the same time *modifies* previous legislation.

IV. Should any one contend that it must be made to appear that the Eastern Division Company has *forfeited* the lands and bonds to which the petitioner claims to be entitled before the Central Branch Company can continue and extend its road, I reply that *the text contains no such idea*. A forfeiture is the *loss of what belongs to one* by some fault, misconduct, or transgression of law. The Eastern Division Company was authorized *only* to construct the road through Kansas *on the terms and conditions* set forth in the statute. It was to complete 100 miles of said road within two years after filing its assent to the conditions of this act, and 100 miles per year thereafter, until the whole *was completed*. And if said road was not so completed, the

Central Branch Company upon the completion of its road was authorized to continue its road in the general direction and route upon which said road through Kansas was thereinbefore authorized to be built. If the Eastern Division Company did not comply with this condition, it worked *no forfeiture*. The lands and subsidies were *not forfeited*, for the Eastern Division Company never *had them to forfeit*. That company did not comply with the conditions, and therefore did not *receive*.

It is in pursuance of *original law and original legislation* that the Central Branch Company now proposes to continue and extend its road—and the *land and subsidies* to which it will be entitled are *not* land and subsidies which some other company has *forfeited*, but land and subsidies to which the Central Branch Company will be entitled by virtue of having *constructed* the road in question. The authority given by the statute to the Central Branch Company to continue and extend its road is precisely the same as that given to the Eastern Division Company, the only difference being *priority* of right to construct. There is no difference whatever between the authority of the two companies except that there is but *one* road to construct, and the Eastern Division Company had the *prior right* to construct. A time was set forth in which that right was to be exercised. That time having expired, and the right on the part of the Eastern Division Company not exercised, the right of the Central Branch Company to continue and extend its road stands out on the page of the statute as clear and untrammelled as though the Central Branch Company from the beginning had been the *only company authorized to construct the road in question*. You may have had *priority* of right over me to the only remaining seat in the overland stage coach about to start over the plains for the Pacific, provided that you availed yourself of this right by a time set. If that time had elapsed, and you had not availed yourself of the right, my right to the seat would be as clear and unquestionable as though I *alone* had the *right from the beginning*, and this, even though the stage company may have furnished you with *other special* conveyance by which to reach your destination; *so here*, the Eastern Division Company had *priority of right* over the Central Branch Company to construct this portion of the “road through Kansas,” provided it availed itself of that right by a time set; that time, however, has now elapsed without the Eastern Division Company having

availed itself of its right, and the right of the Central Branch Company to construct this portion of the road through Kansas stands as *clear and unquestionable* as though it alone had the right from the beginning, and this, even though Congress may have by special legislation provided that the Eastern Division Company may construct *another and entirely different and distinct* road.

V. There is, however, a *forfeiture* provided in the Pacific railroad laws which reads as follows, (act of 1862, sec. 17 :)

" *Provided, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri river to the navigable waters of the Sacramento river, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States.*"

This was afterwards modified by the following provision, (act of 1864, sec. 7 :)

" And the failure of any *one* company to comply with the conditions and requirements of this act, and the act to which this is amendatory, shall *not* work a *forfeiture* of the rights, privileges, or franchise of any *other* company or companies that shall have complied with the same."

A short reference to this provision is important not only by reason of furnishing an *illustration* of that which does *not exist* in the 16th section of the act of 1864, but also by reason of its bearing in another respect upon the subject before us. Under its provisions the Central Branch Company is *bound* by the pains and penalties of *complete forfeiture* to continue and extend its road until a connection shall have been effected. *Not one* of the companies in the language of the law is more than *authorized* to construct its portion of the road. By assenting to the law, however, each company is *bound* to construct. The Eastern Division Company was primarily bound to construct in a given time; and on the non-construction by that company in the time required, the Central Branch Company is *equally bound* to construct, and *unless it does so* construct such portion of the Pacific road as

it is *authorized* to construct, whether such authorization be *primary* or *secondary*, and thus do all that it can do, or is authorized to do, "to form a *continuous* line of railroad ready for "use from the Missouri river to the navigable waters of the "Sacramento river, in California, by the first day of July, 1876," then the whole of the road of the Central Branch Company "before mentioned, and to be constructed under the provisions of "this act, together with all its furniture, fixtures, rolling-stock, "machine shops, lands, tenements, and hereditaments, and "property of every kind and character, *shall be forfeited to, and "taken possession of, by the United States.*"

How *strange* a condition of things would that be for the petitioner to find upon the one hand that its *right* to continue and extend its road *was denied*; and on the other, proceedings by-and-by instituted against it to enforce the *forfeiture* of its entire road, and property of every kind and character, by reason of the fact that it did *not* do that which it was bound to do, namely, to continue and extend its road when the road through Kansas was not constructed within the time required!

VI. But, to return to the "*circumstances*" which we are considering, both companies were *authorized* to construct that part of the road through Kansas now in question. In the language of the law, the Eastern Division Company "*are hereby authorized to construct,*" while of the Central Branch Company it was enacted that it "*shall be entitled to and is hereby authorized to continue and extend,*" &c. Both companies, therefore, had the *right* to construct, but both companies filed their "*assent*" to the act or contract, from which it followed that both companies were *obligated* to construct. The only difference between the two companies is the *priority* of right and *priority* of obligation. Now, by the act of 1866, the Government has *waived* the obligation on the part of the Eastern Division Company to construct this road, and the Eastern Division Company has *waived* the right to construct the road by the acceptance of the provisions of that act. In what condition does this leave the *right* and the *obligation* of the Central Branch Company? Most surely that right and obligation remain unchanged; and on the expiration of the time within which the Eastern Division Company was to have exercised

that right, the Central Branch Company not only has the right to construct, but, also, is *obligated* to construct.

VII. The provisions of the section in reference to a company constructing its road *alone* are not altogether the same as those in reference to a consolidated company. The latter is simply "*authorized*" to continue the construction of its road, while of the former company it is said that upon the completion of its road as hereinbefore provided, it "*shall be entitled to (and is hereby authorized to) continue and extend the same,*" &c., "*and to have all the benefits,*" &c. While, therefore, the Consolidated Company is simply *authorized* to continue and extend its road, the statute provides that the Central Branch Company, upon the completion of its road as hereinbefore provided, "*shall be entitled*" to continue and extend its road. And having declared that the company "*shall be entitled,*" it provided that "*it is hereby authorized*" to continue and extend its road. The "*completion of its road*" is the condition of becoming "*entitled,*" and the Central Branch Company having complied with the condition, now stands before the Department "*entitled*" to continue and extend its road.

But, further, it "*shall*" be entitled. This language is mandatory; all men must heed it; the Executive must execute it; the law requires it.

Again, the enactment relating to the company, which, without consolidating, proceeds alone to construct its road, is stated *separately and distantly* from those relating to a consolidated company. In stating it, *blanks* are left, so to speak, which are to be filled up with what there properly belongs, and nothing more. The enactment reads as follows:

"In case any company authorized thereto shall not enter into such consolidated organization, such company, *upon the completion of its road as hereinbefore provided, shall be entitled to and is hereby authorized to continue and extend the same under the CIRCUMSTANCES, and in accordance with the PROVISIONS of this section, and to have all the BENEFITS thereof as fully and completely as are herein provided touching such consolidated organization.*"

We are to insert therein the "*circumstances,*" "*provisions,*" and "*benefits*" referred to. And as the blank of "*circumstances*" is under consideration, let us fill up that blank, with the *exact words of the statute*, and then read the enactment applying it to

the case of the Central Branch Company. It will then read as follows :

“And in case the Central Branch Company shall not enter into any such consolidated organization, it, upon the completion of its road as hereinbefore provided shall be entitled to and is hereby authorized to continue and extend the same.

“1st. In case any road ‘*authorized as aforesaid*’ shall not have been constructed within the time required.

“2d. In case any road ‘*hereinbefore authorized to be built*’ shall not have been constructed within the time required.

“3d. In case any road ‘*hereinbefore authorized to be constructed*’ shall not have been constructed within the time required.

“4th. In case any road ‘*intended to form a portion of a continuous line from Atchison to the Pacific coast*,’ shall not have been constructed within the time required.

“5th. In case any road ‘*necessary to form a continuous line from Atchison to the Pacific coast*’ shall not have been constructed within the time required.”

But the “road through Kansas” answers *all* these characteristics. It was 1st, a road *hereinbefore* authorized ; 2d, a road *hereinbefore* authorized to be built ; 3d, a road *hereinbefore* authorized to be constructed ; 4th, a road *intended* to form a portion of a continuous line from Atchison to the Pacific coast ; and 5th, a road *necessary* to form a portion of a continuous line from Atchison to the Pacific coast, and said “road though Kansas” has not been constructed within the time required.

In examining this part of the 16th section which relates to a company which, without consolidating, shall proceed alone to construct its part of what was designed to be the great highway of the nation, let it not be supposed that because its provisions are briefly stated, that, therefore, it has not the same effect as though they had been *set forth at length*. While the blanks represented by the words “*provisions*” and “*benefits*” will be considered, to some extent, in the part of this argument which relates to the *acceptance* and *filing* of the petitioner’s map, the *withdrawing* of the lands, and the *issuing of patents* and *United States bonds*, yet, in *connection* with the *right* of the petitioner to continue and extend its road, it is proper to consider that by the words of the statute the Central Branch Company “shall be entitled to have *all*



"the benefits of the provisions of this section as fully and completely as are herein provided touching such consolidated organization." Mark the words, "all the benefits," and the words "as fully and completely." Now, how can this possibly be the case, unless the Central Branch Company are permitted to continue and extend their road?

VIII. Let us now examine the act of July 3, 1866, and see whether it contains any *repeal* of the section referred to, or any *implication inconsistent* with any of its provisions.

The act of 1866 reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, eastern division, is hereby authorized to designate the general route of their said road, and to file a map thereof, as now required by law, at any time before the first day of December, eighteen hundred and sixty-six; and upon the filing of the said map, showing the general route of said road, the lands along the entire line thereof, so far as the same may be designated, shall be reserved from sale by order of the Secretary of the Interior: *Provided*, That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific railroad on the one hundredth degree of longitude, as now required by law: *And provided further*, That said company shall connect their line of railroad and telegraph with the Union Pacific railroad, but not at a point more than fifty miles westwardly from the meridian of Denver, in Colorado."

On its *surface*, this act appears unimportant and unworthy of second consideration, but if we *unveil* its language and remove its apparent covering, we will find one of the most important, and at the same time extraordinary of enactments. By it the Eastern Division Company was enabled to designate at its pleasure the general route of its road, and that with but little or no reference to the acts of 1862 and 1864. By it the company is hereby "authorized to *designate* the general route of their said road, and file a map thereof." If it be supposed that the right of indiscriminate location is restricted by the word "*said road*," it will be found that even this slight restriction, if any it be, is removed by the closing part of the sentence relating to bonds, which provides that they "shall be entitled to only the same amount of

“bonds as if they had connected their said line with the Union Pacific railroad on the 100th degree of longitude, *as now required by law,*” showing clearly that authority was thereby given to construct a road *other than “as now required by law;”* or, in other words, *anywhere than “as now required by law.”* As to bonds, none having been provided for the construction of any other road than the “road through Kansas,” provision was made “that said company shall be entitled to *only the same amount of bonds* of the United States to aid in the construction of their line and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific railroad on the one hundredth degree of longitude.” It was by this provision only that the company became *entitled* to bonds, although the inference on the surface would be that this was designed to be a restriction on the amount of bonds to which they *otherwise* would have been entitled. As to *lands*, the law was found to be defective. It simply provided that “upon the filing of said map showing the general route of said road, the lands along the entire line thereof, so far as the same may be designated, *shall be reserved from sale* by order of the Secretary of the Interior.” It will be observed that no provision was made for *vesting* the title of alternate sections of these lands in said company, nor for *limiting* the amount thereof, but *only* for *reserving* them from sale. The *veil* was then dropped a little further over the real object of the act by providing that “said company shall connect their line of railroad and telegraph with the Union Pacific railroad, but not at a point more than 50 miles westerly from the meridian of Denver, in Colorado.” This provision closed the enactment.

In pursuance of this law, the company proceeded to designate the general route of its road over what is termed the Smoky Hill fork, and filed a map thereof, and then proceeded to construct and have constructed a totally different and divergent road from the road through Kansas. But *the lands—how* were they acquired? In 1869, another bill is passed. The bill purports to *expedite the completion of railroads to Denver*, and to authorize the transfer of lands from the *Eastern Division Company* to the *Denver Pacific Railway Company*. But the 3d section of this bill provides “that *each of said companies shall “re-ceive patents* to the alternate sections of land along their re-

separate lines of road as herein defined in like manner and within the same limits as is provided by law in the case of lands granted to the Union Pacific Railway, Eastern Division. So that under cover of this act, it is provided that the Eastern Division Company also shall receive patents to the alternate sections of land along the line of its new road in like manner and within the same limits as was provided by law in the case of the lands granted to it on that portion which it had constructed of the original road, and of the road through Kansas."

It thus appears that the new line of the Eastern Division Company is now authorized with both lands and bonds. The means by which this has been accomplished has been pointed out. I have already shown that the Eastern Division Company and the Central Branch Company were both authorized to construct that portion of the original line which is embraced in the extension now about to be made by the Central Branch Company, the former having the prior right if exercised within the time required, and that the expiration of that time and the abandonment of that right by the former company, on the adoption of its new line, left the right of the latter company free and absolute. It follows that the Government of the United States stand obligated for *distinct and separate grants and subsidies to the extent claimed*, one of which has already been availed of by the Eastern Division Company on its new line, and the other is now about to be availed of by the Central Branch Company in the extension of its road over that portion of the original line which connects its road with the road of the Union Pacific Railroad Company at the 100th meridian. This conclusion as inevitably follows as *additional cost and expense* follow to him who, having settled upon the plans for the construction of his mansion and made a contract for the building thereof, afterwards alters those plans and makes additions thereto.

By the 9th section of the act of 1864 it was provided that "any company authorized by this act to construct its road and telegraph line from the Missouri river to the initial point aforesaid may construct its road and telegraph line so as to connect with the Union Pacific railroad at any point westward of such initial point, in case such company shall deem such westward connection more practicable or desirable." Conceding that this provision applied to the Eastern Division Company, it became necessary for that company, if it intended to avail itself of the provision, to

1 designate *such change* and to *file a map* designating the general  
 2 route of its road *as thus changed* within the time provided for  
 3 designating general routes and filing maps thereof, which, by the  
 4 5th section of the act of 1864, was extended *one year*. No map  
 5 indicating such change was filed in the time required, but, on the  
 6 contrary, on the last day of the year referred to—to wit, on the  
 7 first day of July, 1865—the Eastern Division Company filed a new  
 8 map of general location *reaffirming* its purpose and design to con-  
 9 nect its said road with the Union Pacific railroad at the 100th  
 10 meridian, thereby *exhausting* its right to change its western ter-  
 11 minus in pursuance of the provision referred to. Whereupon the  
 12 rights of the Central Branch Company under the 16th section of  
 13 the act of 1864 became disencumbered and relieved from the right  
 14 of the Eastern Division Company to change its western terminus, if  
 15 so be that the Eastern Division Company possessed such right under  
 16 the provision referred to. And the *right* of the Central Branch  
 17 Company to continue and extend its road in the general direction  
 18 and route of “the road through Kansas,” as said road through  
 19 Kansas was *originally* laid out, *attached in all its force* in the event  
 20 of “the road through Kansas” not being built in the time required.  
 21 It will be observed that by the 9th section of the act of 1864, that  
 22 the Eastern Division Company was authorized to change *only* its  
 23 western terminus. In all *other* respects “the road through Kan-  
 24 sas” would have had to comply with the requirements of the  
 25 statute. It still would have been required to be “so located”  
 26 that the Central Branch Company could have made connection  
 27 therewith “within the limits prescribed.” In this respect *the act*  
 28 of 1866 *differs* most materially from the *provision* referred to in  
 29 the act of 1864. By the act of 1866 the *right of indiscriminate*  
 30 *designation of general route* is given to the Eastern Division Com-  
 31 pany. The power to designate the general route of its road by  
 32 filing a map as required by law was *free* from all restrictions of  
 33 every kind and character, excepting that the company was re-  
 34 quired to connect its line of railroad and telegraph with the Union  
 35 Pacific railroad at a point not more than 50 miles westwardly  
 36 from the meridian of Denver, in Colorado. This is manifest from  
 37 the *wording* of the law, and it has received this interpretation in  
 38 the departments. The map designating its general route was  
 39 *filed and accepted* on this interpretation. *Lands* have been *with-*  
 40 *drawn*, and *bonds* have been *issued* upon this interpretation. So

that the act of 1866, as interpreted by the departments, as intended in its inception, and as indicated by its provisions, is an act of *de novo legislation*, and not an act in the nature of a *continuation* of a *pre-existing provision*.

Let us examine this still more closely. The *provision* of the act of 1864 (if it applied in this case) simply authorized a moving further to the westward of the *western terminus* of a road whose general route had already been designated, while the act of 1866 authorized the Eastern Division Company to "*designate the general route*" anew of all that portion of its road which had not yet been constructed. The act was so interpreted, a map designating anew the general route of its road was accepted, and the road was constructed accordingly, notwithstanding the fact that the route of the road of the Central Branch Company had then for a long time been settled, and more than one-half the cost of construction incurred. Why should one interpretation be put upon the act of 1866 for the Eastern Division Company, and another interpretation for us? What have we done that the right arm of Executive power should be stretched over this act for one purpose for them, and for another purpose for us? Are they the children of Israel and we the hosts of Pharaoh, that the act of 1866 is to stand as a wall of protection unto them, while unto us it is the overwhelming waters of the Red sea? Are we to perish in the wilderness, while they are to pass on to the opening land of promise?

Let it be borne in mind that the object of the Pacific Railroad act was not to give subsidies to companies to be used at their pleasure, but it was to aid in the construction of a specific road. Alternate sections of public land were granted to the Union Pacific railroad "for the purpose of aiding in the construction of said *railroad*," and bonds of the United States were issued to said company only for the like purpose. In keeping with this idea, the Eastern Division Company was authorized to construct the "road through Kansas," a road specially and specifically located in many particulars, including fixed termini, and *this road*, and no other, said company was authorized to construct "upon the *same terms and conditions in all respects*" as were provided for the construction of the Union Pacific railroad. And if section 9 of the act of 1864 applied to the Eastern Division Company, it will also be observed that after authorizing that company "to connect "with the Union Pacific railroad at any point westwardly of such

"initial point, in case such company shall deem such westward connection more practicable or desirable," it is expressly provided that, "in aid of the construction of so much of its road and telegraph line as shall be a *departure* from the route hereinbefore provided for its road, such company shall be entitled to *all the benefits* of this act," excepting that it shall receive no "greater amount" of lands and bonds than if "the same had united with the Union Pacific railroad on the 100th degree of longitude." Now, an act which was designed to continue the provisions of this section need *only* have extended the *time* for that purpose; no other provision would have been necessary. But the act of 1866 was passed for a *radically different purpose*; it authorized the Eastern Division Company to "*designate the general route*" of its road, not simply to change its western terminus, but to designate its general route, and to construct a road *other than "as now required by law."* And if the act had stopped here, it would *not* have been entitled to any subsidies in aid of the construction of its *new* road. But the act goes further. It provides that the company shall be entitled to "bonds of the United States to aid in the construction of their line of rail-road and telegraph," but to only the same amount as they would "have been entitled to if they had constructed the road "now required by law," namely, "the road through Kansas." As to the alternate sections of land, that company saw and felt the necessity of *additional* legislation; and finally, as stated in 1869, under the cover of an act entitled for another purpose, obtained the requisite legislation for the *issuing of land patents*, and *fixing the amount* of alternate sections to be embraced therein.

IX. What possible effect has this act of 1866 on the *rights* which the Central Branch Company acquired under the 16th section of the act of 1864? The Central Branch Company is not named therein, and there is no provision therein repealing the 16th section. That section was passed with reference to the roads *then* authorized. It so states again and again, in unmistakable language on its face. There was no such road as that on the Smoky Hill Fork *then* authorized. It seems like a waste of words to attempt further to demonstrate that the 16th section had reference to the "road through Kansas" when there was then no other road authorized to be constructed by the Eastern Division Company. The fact that the Eastern Division Company, by the act

of 1866, is allowed to designate a *new* route for the construction of *another* and a *divergent* road, does not affect us. Take a still stronger case than the one under consideration. Suppose Congress, in 1862, had incorporated a company by the name of "The Northern Pacific Railroad Company," and in 1864 had incorporated "another company by the name of "The Southern Pacific Railroad Company." And suppose, in incorporating the latter, the act provided that all the rights, powers, and privileges which are conferred by the "act to incorporate the Northern Pacific Railroad Company" are hereby extended to and conferred upon the Southern Pacific Railroad Company. And then suppose that in 1866 an act was passed repealing the act incorporating the Northern Pacific Railroad Company. Would the act last named in any possible way disturb the rights, powers, and privileges of the Southern Pacific Railroad Company? So here, by the act of 1862, the Eastern Division Company was authorized to *construct* a road called "*the road through Kansas*," and the Central Branch Company was authorized to *connect and unite* therewith. Afterwards, by an act passed in 1864, the Central Branch Company was authorized, upon the completion of its road, to *continue and extend the same* in the *general direction and route* of "*the road through Kansas*" in case "*the road through Kansas*" should not be completed within the time required. Subsequently, in 1866, at the instance of the Eastern Division Company, an act was passed under which that company was permitted to *designate a new route*, running in *another* direction, and construct a road thereon *different* and *altogether divergent* from "*the road through Kansas*." What *possible effect* has the act last referred to on *the right* of the Central Branch Company to *continue and extend its own road* after the expiration of the time within which "*the road through Kansas*" was to have been constructed? None whatever.

If it be supposed that the *act* of 1866, with lightning power, *shatters the rights* which the Central Branch Company has acquired under the acts of 1862 and 1864, and in authorizing the Eastern Division Company to change its route, *rends asunder*, as it were, the *king-bolt* by which *other* parts of the Pacific railroad are held together, so that they are no longer *integral* members of a *united whole*, it will be found that it has no such effect. The act of 1862 authorized the Eastern Division Company to construct what the statute calls "*the road through Kansas*;" it pro-

provided that this road should be so located that the Central Branch Company could make connection therewith, within the limits prescribed. In order to connect and unite therewith, the Hannibal and Saint Joseph Railroad Company was authorized to extend its road for 100 miles, next to the Missouri river. The two companies, with all the other companies named, were required to operate and use their roads, so far as the public and Government were concerned, as one continuous road, and to secure each to the other equal advantages and facilities as to rates, time, and transportation. The act of 1864 then provided that if the Eastern Division Company should not construct this "road through Kansas" in the time required, that the Central Branch Company, upon the completion of its road, shall be entitled to and is hereby authorized to continue and extend its road (mark, *not* the road of the Eastern Division Company, but *its* road) in the general direction and route upon which "the road through Kansas" had been authorized to be built, until such continuation of its road should reach the main trunk at the 100th meridian, and at such point "to connect and unite therewith." Then came the act of 1866, in which Congress said to the Eastern Division Company: "In the place of constructing the road through Kansas, you may designate a new line to suit yourself, and construct a road thereon." Does this act of 1866 wipe out all this legislation, so that the road of the Central Branch Company is now a shattered fragment of what was designed and intended to be a *unit*? Such an interpretation would be a monstrous interpretation of law.

The legislation which has *intervened*, and which began by connecting *another road* with "the road through Kansas," and creating *other rights* therein in *another company*, and which resulted in that other company being *entitled and authorized*, upon the completion of its road, to continue and extend *its own road* in the general route and direction of "the road through Kansas," in the event of that road not being constructed within the time required, *stands in all its force unrepealed*. And the Central Branch Company to-day stands before this Department (its road being completed) *entitled to and authorized to continue and extend its road*. And the act of 1866 has *not* wiped out *this legislation*, nor the result nor consequences thereof.

The 7th section of the act of 1864 expressly provides that "the failure of any one company to comply fully with the conditions



“and requirements of *this act* and *the act to which this is amendatory* shall not work a forfeiture of the rights, privileges, and franchises of *any other company* or companies that shall have complied with the same.” It makes no difference how this failure occurs, whether it arises from *bad faith*, pecuniary disability, or the intervention of Congress, it is still a *failure* to comply with the acts of 1862 and 1864; and the statute expressly declares that such failure *shall in nowise affect* the rights of *any other company*. While the *rights* of the Central Branch Company stand upon the rock of *original legislation*, yet it is satisfactory to know that *those rights* are *walled about and protected* by the *letter* of the statute as well as by the *general principles* of law.

That the effect of the act of 1866 is to annihilate that portion of “the road through Kansas” which lies to the south of the petitioner’s point of connection therewith, and north of the line of the road of the Eastern Division Company, is conceded. *But it by no means in any way affects the rights claimed by the petitioner.*

The act of 1866 prevents the *Central Pacific Railroad Company* from connecting its line with that of the Union Pacific Railroad Company to the *same extent* precisely as it prevents the *Central Branch Company* from connecting its road with the Union Pacific railroad. Its effect upon both companies is *precisely the same*. If the idea is *absurd* in the *one case* it is *equally absurd* in the *other case*.

The fact is that the 16th section of the act of 1864 is the *king-bolt of the Pacific railroad*. It *fastens together all its different parts*. It was wisely prepared with that *object and intent*. It is a solemn enactment of Congress, and it requires an enactment of *equal character*, and *expressed in fit and apt language*, to *repeal it*.

#### FOURTH.

Accompanying the petition is a *map designating the road* of the petitioner and the *general direction and route* of the extension of said road, pursuant to the provisions of said 16th section of the act of 1864. The petitioner prays that this map may be *accepted, approved, and permitted to be filed*, and that the Secretary of the Interior will *withhold* from private entry and sale the *Government lands* for the distance of 25 miles on the line of the extension of *the petitioner’s road*, as designated and shown upon said map.

I. A further examination of the provisions of the said 16th section of the act of 1864 will show that *the practice* in cases of this kind is plainly and clearly marked out and defined. The statute reads:

“ *And for and in aid thereof the said consolidated organization may do and perform in reference to such portion of road and telegraph as shall go be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto.*”

It will be observed that it is here provided—

1st. That the petitioner in this case may *do and perform* all the acts and things in reference to that portion of its road and telegraph embraced in the extension which the Eastern Division Company, at the time of the passage of the act of 1864, or previously thereto, had been authorized to do and perform.

2d. That the petitioner *is entitled to similar and like grants, benefits, &c., and to have similar and like acts and things done and performed by the Government of the United States, the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to the extension of the petitioner's road, as had been provided for or required to be done and performed at the time of the passage of the act of 1864, or previously thereto, for the Eastern Division Company, for the like portion of its road.*

The 7th section of the act of 1862 required the Eastern Division Company to designate the general route of its road, and file a map thereof in the Department of the Interior. *In like manner*, the petitioner now *designates* the general route of the extension of its said road, and *presents a map* of the same to the Department of the Interior, and requests that the same may be accepted and filed, and claims that *this act is among “the several acts and things”* which the petitioner is *authorized to “do and perform”* in reference to such

portion of road and telegraph as is in continuation of its constructed road and telegraph.

II. The same section of the act of 1862 further provides that upon the filing of such map by the Eastern Division Company, the Secretary of the Interior shall cause the lands within 15 (afterwards altered to 25) miles of said designated route to be withdrawn from pre-emption, private entry and sale. And as *the withdrawing* of the lands within 25 miles of the said designated route of the petitioner from preëmption, private entry and sale, is among the "*acts and things*" which the Secretary of the Interior, by the act of 1862 and 1864, was authorized and required to do and perform for the Eastern Division Company, the petitioner requests that *orders may now in like manner* be issued from the department, requiring and directing that the lands within 25 miles of the route designated on the map of the petitioner, beginning with the *termination* of the completed one hundred miles of the road of the petitioner, and terminating with the *connection* of said petitioner's road with the Union Pacific Railroad at the 100th meridian, shall be withdrawn from pre-emption, private entry and sale.

III. A *preliminary question*, however, arises before accepting the map of the petitioner, and withdrawing the lands on the line thereof, as to *the correctness* of the petitioner's map. By the law this map must show a line running in "*the general direction* and "*route upon which such incomplete or unconstructed road is here-  
before authorized to be built ;*" that is to say, in the general direction and route upon which "*the road through Kansas was  
hereinbefore authorized to be built.*" Now this "*road through Kansas*" was *definitely* located in some particulars, while in other respects it was left to the *discretion* of the company constructing it—its "*general route*" only to be observed. Like all other roads, it was to have its termini, and traverse the intervening country. By the statute it was *definitely* located in the following respects: 1st. It was to commence "*at the mouth of the Kansas river,*" (sec. 9, act of 1862.) 2d. It was to "*be made by the way of Lawrence and Topeka,*" (sec. 12, act of 1864.) 3d. It "*shall be so located,*" &c., that the road of the Central Branch Company "*can make connection within the limits prescribed,*" (sec.

9, act of 1862.) And 4th. It was to be built "to the aforesaid point on the 100th meridian of longitude west from Greenwich, in the Territory of Nebraska," (sec 9, act of 1862.) No provision for any change in any one of these particulars was made, except that sec. 9, of the act of 1864, as already stated, provided "that any company authorized by this act to construct its road and telegraph line from the Missouri river to the initial point aforesaid, may construct its road and telegraph line so as to connect with the Union Pacific railroad at any point *westerly* of such initial point, in case such company shall deem such westward connection more practicable or desirable." It is doubtful, in view of the language of the 12th section of the act of 1864, whether this provision applies to the "road through Kansas." But it is immaterial whether it did or not, inasmuch as it became necessary for the Eastern Division Company, which was authorized to construct the "road through Kansas," if it availed itself thereof, to file a map designating such change within the time provided for designating routes and filing maps; which, by the 5th section of this same act, was extended *one year*; that is to say, until and including July 1, 1865, and the Eastern Division Company during said year, as already stated, not only did *not* change its general route and file a map showing such change, but *on the contrary*, on the first day of July, 1865, being the last day of said year, filed a new map of general location, reaffirming their purpose and design of connecting the said road with the Union Pacific railroad at the 100th meridian. So that the western terminus of the "road through Kansas" remains unchanged. The map offered by the petitioner complies in all respects with the law, and shows the extension of the road of the petitioner pursuant to the provisions of the 16th section of the act of 1864, and therefore should be accepted and filed.

#### FIFTH.

The petitioner further requests that the Secretary will make *such decision or order* in respect to the *rights* of the petitioner to *receive the land grants and subsidies* for said extension as will *secure* the same to the petitioner.

The quotation from the 16th section last made clearly defines the rights of the petitioner in this respect.

The statute declares that "*for and in aid thereof*" the petitioner

"shall be entitled to similar and like grants, benefits, immunities, guarantees, acts and things to be done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners" "similar and like" in all respects to those which had been provided for the Eastern Division Company had it constructed the entire "road through Kansas" as originally provided. The law, therefore, plainly and clearly provides that on the completion and equipment of the first twenty miles of the said extension of the road and telegraph of the petitioner as required by law, and the receipt of the "certificate of said Commissioners to that effect," that patents for "every alternate section of public land designated by odd numbers, to the amount of ten alternate sections per mile on each side of said railroad, on the line thereof and within the limits of twenty miles of each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed," shall be issued to said company by the *Secretary of the Interior*. And upon the receipt of the like certificate, the *Secretary of the Treasury* "shall issue to the said company bonds of the United States" of \$1,000 each, payable in thirty years after date, bearing six per cent. per annum interest, (said interest payable semi-annually,) which interest may be paid in United States Treasury notes, or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of 20 miles." And in like manner said company, upon the completion and equipment of each successive 20 miles of railroad and telegraph, shall be entitled to a like amount of lands and bonds.

#### CONCLUSION.

I have thus given *the letter* of the law as it stands, and have pointed out how *its language* is adapted and fitted to the case under consideration. Let us now look away for a moment to the *object* and *purpose* which Congress had in view in the passage not only of this 16th section but of the entire law. The American people, divided into two great parties in their respective conventions held in 1860, declared it to be the duty of the Govern-

ment to see to it that *a railroad to the Pacific coast* was speedily constructed, and to that end—

1st. In the Republican convention it was resolved,

“That a railroad to the Pacific ocean is imperatively demanded by the interests of the whole country; that the Federal Government ought to render immediate and effective aid in its construction;” and

2d. In the Democratic convention it was resolved,

“That one of the necessities of the age in a military, commercial, and postal point of view, is a speedy communication between the Atlantic and Pacific States, and the Democratic party pledge such constitutional Government aid as will insure the construction of a railroad to the Pacific coast at the earliest practicable period.”

Upon the assembling of the Thirty-Seventh Congress, composed of men of both parties, measures were taken to carry into execution the *will of the people as thus unanimously expressed*. The result was the passage of the act entitled—

“*An act to aid in the construction of a Railroad and Telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military, and other purposes,*” approved July 1, 1862.

The object of this act, as stated in the title, is clear and explicit. An examination of the framework of the law will show that Congress determined at the outset that the road should be constructed upon a *definite and fixed plan*, which they then and there proceeded to establish. They determined that the road should consist of what was styled “*main trunk*” and “*branches*.” The “*main trunk*” was to be started at a point on the 100th meridian, between the north margin of the Platte river and south margin of the Republican river in the Territory of Nebraska, being about 250 miles distant from the Missouri river, and run thence west, and was to be connected with the Missouri river by means of various “*branches*,” the object being to *scatter and diffuse* the benefits of the road among the net-work of roads constructed and to be constructed lying east of said river. *Points* were designated upon the river from which these “*branches*” should start. A company was incorporated for the purpose of constructing the “*main*

*trunk*” through the Territories. This company was also authorized to construct *one* of the “*branches*,” which also laid in *one* of the Territories. *Inducements* were then held out, and *lands* and *subsides* pledged, to induce the construction of branches from other points in Kansas and elsewhere, including *Atchison*. The companies were *specially invited* to come forward and to enter into a *contract* with the Government for the purpose of securing the end in view. They were required, if favorable to the project, in the language of the 7th section, “to file their *assent* to this act under *seal* of said company in the Department of the Interior.” The companies, in accordance with this provision, signified their *assent* under their respective *seals*, and filed the same in the Department of the Interior.

The entire trunk and branches were to be a *unit*, and were to be operated as “*one continuous line*.” In conformity with this, and in harmony with the *significant* terms, “*main trunk*” and “*branches*,” the following, among other provisions, were made:

1. “The *track* upon the entire line of *railroad* and *branches* shall be of “*uniform width*, to be determined by the President of the United States; “so that, when completed, *cars can be run from the Missouri river to the “Pacific coast.*” (Sec. 12, act of 1862.)

2. “The *whole line* of said *railroad* and *branches*, and telegraph, shall be “operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, *as one continuous line.*” (Sec. 12, act of 1862.)

3. “If said roads are not completed so as to form a *continuous line* of “railroad ready for use from the Missouri river to the navigable waters of “the Sacramento river, in California, by the 1st day of July, 1876, the “*whole of all of said railroads* before mentioned, and to be constructed “under the provisions of this act, together with all their furniture, fixtures, “rolling stock, machine shops, lands, tenements, and hereditaments, and “property of every kind and character, shall be forfeited to and taken possession of by the United States.” (Sec. 17, act of 1862.)

4. “The gauge of the Pacific railroad and branches throughout their “whole extent, from the Pacific coast to the Missouri river, shall be and “hereby is established as four feet eight and one-half inches.” (Act of 1863.)

Each company being *separate* and *distinct* from the other, and the object being to construct a road which was to be a *com-*

*plete and harmonious whole*, further legislation became necessary. Notwithstanding the inducements held out, it was obvious of course that they were entirely inadequate to the object sought, unless *absolute continuous connection was guaranteed and pledged to each* of the respective companies. Accordingly we find *prominent, and chief* among the provisions of the act of 1864, the *16th section* which we have considered. The *motive* which induced its enactment is necessary to a proper understanding of its provisions. It was a distinct *contract* made with each company separately. The *object* was to *make every provision* possible to insure the *execution* of the *will* of the people by the construction of this road. To that end, *first*, for the purpose of giving *greater strength* to the companies and *power of execution*, any two or more of them were authorized at any time to *unite and consolidate* their organizations; and *second*, for the purpose of guaranteeing to each company a connection, *so that* the line from each of the designated points on the Missouri river to the Pacific coast might be *one and continuous*, they were authorized, after completing *their roads*, to construct *any other parts, portions, or sections* of the *plan* which had been assigned to *any other company* to construct in case the same should not be constructed within the time required. But Congress saw they had no power to *coerce* a consolidation; they therefore, also, provided that *any company* authorized to participate in the benefits of the act upon the completion of its road "*is hereby authorized to continue and extend the same*" in case of the non-construction of any other part of the road "*necessary to form a continuous line,*" in accordance with the *plan as then authorized and established*.

But further than this, for the purpose of holding out still stronger inducement, and of giving still greater protection to any company which, without consolidating, should proceed alone to construct its part of the great undertaking, it was provided that such a company, upon the *condition* of the completion of its road, and by virtue of such completion, "*shall be entitled*" to continue and extend the same under the circumstances, &c., and not only so, but also "*shall be entitled \* \* \* to have all the benefits*" which a *consolidated company* could have, including among *those benefits* the benefit of "*a continuous line from each of the several*" "*points hereinbefore designated on the Missouri river to the Pacific*" "*coast,*" and the consequent *benefit* of that provision by which the



“companies were required “to *operate and use* said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and government are concerned, *as one continuous line.*” In short the object of the section was, 1st, to *facilitate* the construction of the road, and 2d, to *effectually unite and firmly fasten to each other* its different parts.

*Prominent* among the companies which were authorized to take part in this undertaking was *the Hannibal and St. Joseph Railroad Company*. Prominent by reason of its enterprise in having penetrated with rail the West to a further point than any other company. Its friends both in and out of Congress took active part in the framing of the law, and *assented thereto only* upon the supposition and belief *that their interests were fully protected*, and that the *benefit of a continuous line to the Pacific coast was secured* to the Hannibal and St. Joseph Railroad Company. This company was authorized, as already shown by the act, to extend its road by way of Atchison 100 miles west in order there to unite and connect with another part of the road called “the road through Kansas.” And in case “the road through Kansas” should not be constructed within the time required it was not only “*authorized*” upon the completion of its road to continue and extend *its own road* to a connection with the main trunk, but the law provided that it should be “*entitled*” so to do, and for and in aid of the construction thereof should be “*entitled*” to similar and like grants, benefits, immunities, &c., and to have similar and like acts and things done by the Government of the United States, by the Secretary of the Treasury, by the Secretary of the Interior, and by the Commissioners, &c. Relying upon the *faith of the law* and the *connection therein guaranteed*, and the *pledges made*, this company, through its assignees, the Central Branch Company, proceeded to *fulfil its contract*. And as appears by the documents and papers on file in the Department of the Interior, *that contract has been fulfilled by said company to the letter*. *A road has been constructed in keeping with its national character*, but which is *lost and more than lost* unless the company is permitted, in pursuance of the law, to *continue and extend* it to an intersection with the “main trunk.” The company has complied with the condition; it has advanced the necessary capital; it has put forth the requisite energy, and has completed its road; and now stands before the Departments entitled to the promised compensa-

tion ; entitled to the benefits of its contract ; in short, entitled to the benefits of the law. Shall the law be executed ?

As appears by the *affidavits* of stockholders, more than \$2,000,-000 of *private capital*, without reference to that of the Government, has been invested. And shall it be said that *this is a trap* which was set from the beginning for these men, and that *the end of this law and contract with the Central Branch Company was to entice and allure these men into this trap and then crush them* ? In the language of the Hon. Reverdy Johnson, "They tell us—and *'unless they had been deranged men it could not have been otherwise* "—that but for the conviction to which they had come upon reading the acts to which I have alluded, they never would have expended three or four millions upon an undertaking *absolutely fruitless*, if it was to be *deprived of the advantage of a connection with the 'main trunk.'* " These men are well aware of the *subtle and powerful influence of antagonistic interest*. But they claim that their *right* to continue and extend their road to a connection with the main trunk could not be *more clear and unquestionable*. Many of them are well known to the honorable Secretary, They are *honest* men ; they have constructed their road in an *honest* manner, and with an *honest* purpose, at the hands of an *honest* administration, *they ask justice*.

The eminent statesmen and profound lawyer, whose name has just been mentioned in speaking of the right of the Central Branch Company under existing laws to continue and extend its road to a connection with the main trunk, and receive grants and subsidies therefor, said that such was the law : "*first*, because by "any other interpretation of those laws the *manifest policy* of "Congress would be defeated ; and *secondly*, because *the words of 'the law, in my opinion, admit of no other interpretation.'*"

Before closing, allow me to remind the Honorable Secretary that the breeze that blew through the Capitol in 1862 and 1864 was heavily laden with the importance and necessity of the speedy construction of the Pacific railroad, and resulted in the enactment of all laws that were necessary to *that end*, and to the *attraction and protection of capital* for that purpose, and had the matter now before the Department *then* have arisen, no questions of *responsibility or policy* of action would have suggested themselves, or intervened between the petitioner's application and the execution of the law.

But of late the breeze has changed. Tornadoes of economy have been bending the oaks of *national obligations* and moaning about the foundations of *financial enactments*. But in the midst a voice was heard, which, while it counseled economy, at the same time declared that "*all laws will be faithfully executed,*" and that "*it will be my endeavor to execute all law in good faith.*"

These words are the harbor of safety. In that harbor we shall with confidence await the deliberate judgment of the Honorable Secretary, as he shall determine *the law* of this case as between *the Government* on the *one* hand, and the *petitioner* on the *other*; remembering, in the language of Mr. Justice Story, that "while it is true that the Government of the United States is sovereign, yet, at the same time, *she is a subject of obligation and duties, and it is plain that the same general rights, duties, and limitations which the common law attaches to contracts of a similar character between private individuals are applied to the contracts of the Government.*"

## SUMMARY.

In view of the argument now closed, and the affidavits herewith submitted, it is claimed that the following *propositions* are demonstrated :

### PROPOSITIONS OF LAW.

1. "That the Eastern Division Company was authorized to construct a road called "*the road through Kansas.*"

2. That this "*road through Kansas*" was located in part by the law itself, and in part by a *map of general location*, filed in the Department of the Interior, pursuant to sec. 7, act of 1862, which was not and could not after July 1, 1865, be changed, and like all other roads it had its *termini*, and traversed the *intervening country*.

3. That among other provisions it was provided that this road should be "*so located*" that the *Hannibal and St. Joseph railroad* might make connection therewith "*within the limits prescribed,*" provided the same could be done "*without deviating from the general direction of the whole line to the Pacific coast.*"

4. That the Eastern Division Company was required to complete 100 miles of "*the road through Kansas*" within two years *after filing its assent* to the conditions of the act, and one hun-

dred miles per year thereafter, until the whole was completed. That afterwards, by joint resolution of May 7, 1866, the time for completing the first one hundred miles thereof was extended to June 27, 1866, and the time for completing each succeeding one hundred miles was to be reckoned from that date.

5. That in order "*to connect and unite with the road through Kansas,*" the Hannibal and St. Joseph Railroad Company was authorized to "*extend*" its road *via* Atchison "*for 100 miles in length next to the Missouri river,*" and for this purpose to use any railroad charter which had been or might be granted by the Legislature of Kansas.

6. That by the 16th section of the act of 1864, it was provided that the Hannibal and St. Joseph Railroad Company might consolidate with any one or more of the companies named. But if without consolidating with another company it should proceed alone to construct its road, and "the road through Kansas" should not be constructed within the time required, then "*upon the completion of its road as hereinbefore provided, it shall be entitled to (and is hereby authorized to) continue and extend*" its road and telegraph (not the road and telegraph of another, but *its own* road) in the general direction and route upon which "the road through Kansas" was hereinbefore authorized to be built, until it should connect and unite with the main trunk at the 100th meridian ; and "for and in aid thereof" "*may do and perform*" "all and singular the several acts and things" which the Eastern Division Company was authorized to do and perform ; "and shall be entitled to similar and like grants, benefits, immunities," &c. ; and to have "acts and things" "done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by Commissioners" "*similar and like*" to those which they would have been required to do and perform for the Eastern Division Company ; and not only so, but "such company, upon the completion of its road as hereinbefore provided, shall be entitled \* \* \* to have all the benefits of the provisions of the 16th section of the act of 1864 as fully and completely as are therein provided touching such consolidated organization," that is to say, as fully and completely as though it had consolidated with any one "or more of the companies authorized to participate in the benefits of the act."

7. That it was expressly provided that "the failure of any one

company to comply fully with the conditions and requirements of the *acts of 1862 and 1864* shall not work a forfeiture of the *rights, privileges, or franchise* of the Central Branch Company, or of any other company or companies that shall have complied with the same."

8. That *all* these provisions of the law emanated from the same fountain head, and received their force and effect by reason of *original legislation*. And that *those* which apply to and affect the *Eastern Division Company* are *separate and distinct* from those which apply to and affect the *Hannibal and St. Joseph Railroad Company*.

### PROPOSITIONS OF FACT.

1. That in pursuance of the foregoing provisions of law the Eastern Division Company commenced to construct "the road through Kansas."

2. That the first 100 miles of "the road through Kansas" was constructed in due time; but that the second 100 miles thereof was *not* constructed "*within the time required*." That such time, to wit, June 27, 1867, has long since elapsed, and has never been extended, and to this day the second 100 miles of said road has not been constructed, so that said road has not been constructed within the time required.

3. That the Hannibal and St. Joseph Railroad Company through its assignees, the *Central Branch Company*, proceeded to to extend its road *via* Atchison for 100 miles in length next to the Missouri river, and have completed the same "as hereinbefore provided."

### CONCLUDING PROPOSITIONS.

1. That in view of the law and facts as thus shown, the Central Branch Company having complied with the *condition*, that is, completed its road "*as hereinbefore provided*," stands before this department not only "*authorized*," but "*entitled*" to continue and extend "*its road*" in "the general direction and route" of "the road through Kansas" to a connection with the "main trunk" at the 100th meridian; and "for and in aid thereof" to have the *map* accompanying the petition *approved* and *filed*, and the *lands* along the line thereof *withdrawn* from pre-emption, *private entry and sale*, and as each successive section of 20 miles

of its extension shall be completed, for and in aid thereof "*entitled*" to land patents and United States bonds, and to have done and performed "by the Secretaries of the Treasury and Interior, and by commissioners" all the "*acts and things*" provided for that purpose.

2. That independent of the *direct* provision whereby the Central Branch Company is both authorized and entitled to continue and extend its own road, the Central Branch Company, from the *very necessity* of the case, must be permitted to continue and extend its road to a connection with the main trunk as a *prerequisite* of *absolute necessity*, in order that the *provision* of law may be executed by this department, which provides that the Central Branch Company, "upon the completion of its road as hereinbefore provided, shall be entitled to have *all the benefits* of the provisions of the 16th section of the act of 1864, as *fully* and *completely* as are therein provided, touching such consolidated organization," that is to say, as *fully* and *completely* as though it had consolidated with any one "or more of the companies authorized to participate in the benefits of the act," it being impossible to have *all* such benefits *without* uniting and connecting with the main trunk.

3. That it is *immaterial* how the *failure* upon the part of the Eastern Division Company to construct "the road through Kansas" within the time required, or in any other respect "to comply fully with the conditions and requirements" of the acts of 1862 and 1864 arose; whether it arose from *bad faith, pecuniary disability*, or its own *authorized volition*, it is still a *failure to comply* with the acts of 1862 and 1864; and the statute expressly declares that such failure *shall in no wise affect* the *rights* of any other company.

4. That the *right* of the Central Branch Company to continue and extend its own road rests upon *original legislation, written and enacted* for that purpose.

5. That the act of 1866, as *interpreted* by the Departments, and as *intended in its inception*, (though *covert* in its language,) authorized the Eastern Division Company to designate a new route running in another direction, and to construct a road thereon different and divergent from "the road through Kansas," and was not designed or intended in any way to impair or affect the rights of the Central Branch Company. That it contains *no*

*repeal of those rights, nor any implication inconsistent therewith.*

6. That it is plain and beyond question and doubt, and it has been so interpreted, that the act of 1866 is *an act of de novo legislation*, and *not an act in the nature of a continuation of a pre-existing provision.*

7. That *those* who have put forth the necessary energy and advanced the requisite capital for the construction of any part of the Pacific railroad have a *high claim* upon *all the benefits* resulting from the provisions of the law. Especially so in a matter like the Pacific railroad, where, owing to the almost uninhabited and uncultivated character of the country, *the entire value* arises from the *continuous connection of its parts.* And it would be doing *violence* to the *moral sense* to entertain *any implication* not necessarily springing from the very letter of the act which would tend to *dissolve such connection*, and thus *ruin* men who have acted in *good faith*, and who relied upon provisions the very *intent* of which was to *induce those men to embark in the undertaking.* That not only the *presumption* but the *inevitable conclusion of law* is that the act of 1866, in the language of the original act, was passed with "*due regard for the rights*" of the Central Branch Company, and *does not and was not intended to impair those rights.*

EFFINGHAM H. NICHOLS.

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